IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

OP.No. 25767 of 2000(P)
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PETITIONER:
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1. VIRENDRA SPICES, 11-419, KURIAL LANE, CALICUT 32,
   REPRESENTED BY ITS PARTNER, RAMESH KUMAR SHARMA

2. RAMESH TRADERS, 11-419, DO. DO.

3. VINAYAK AGENCIES, 12-182, HALWA BAZAAR, CALICUT 1
   REPRESENTED BY ITS PARTNER NAVINKUMAR BARANWAL.

4. VIJAY SPICES, 12/265, HALWA BAZAAR, CALICUT 1
   REPRESENTED BY ITS PARTNER VIJAY KUMAR C. SHAH

5. NARESH KUMAR SHARMA, PROPRIETOR, JAI ENTERPRISES,
   GUNNY STREET, CALICUT 1

6. MAHESWARI TRADERS, 9/228 E, SOUTH BEACH ROAD, CALICUT 1
   REPRESENTED BY ITS PARTNER DWARAKA PRASAD MALPANI.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS:
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1. ASST. COMMISSIONER (ASSESSMENT), SPECIAL CIRCLE II, KOZHIKODE.

2. COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

3. STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVT.,
   TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. C.K. GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 43434 OF 2000 IN OP 25767 OF 2000

DISMISSED

16.3.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE NOTIFICATION SRO 127/2000 ISSUED BY THE GOVT.

EXT.P2 TRUE COPY OF THE RELEVANT PORTION OF NOTIFICATION SRO 1091/99 ISSUED BY THE GOVT.

EXT.P3 TRUE COPY OF DELIVERY NOTE NO. 219782 IN FORM NO. 26

EXT.P4 TRUE COPY OF THE REPRESENTATION GIVEN BY THE FIRST PETITIONER TO THE FIRST RESPONDENT DATED 9.3.2000

EXT.P5 DO.DO. 2ND PETITIONER.

EXT.P6 DO. DO. 3RD PETITIONER.

EXT.P7 DO.DO. 4TH PETITIONER.

EXT.P8 TRUE COPY OF THE CIRCULAR NO. 8/95/TX DATED 5.4.1995 ISSUED BY THE BOARD OF REVENUE (TAXES) THIRUVANANTHAPURAM.

EXT.P9 TRUE COPY OF THE LETTER OF THE DY. COMMISSIONER (GENERAL), OFFICE OF 2ND RESPONDENT DATED 3.8.2000

EXT.P10 TRUE COPY OF STATEMENT OF TAX PAID AND THE EXCESS PAYMENT REFUNDABLE TO THE FIRST RESPONDENT.

EXT.P11 DO.DO. 2ND PETITIONER.

EXT.P12 DO.DO. 3RD PETITIONER.

EXT.P13 DO.DO. 4TH PETITIONER.

EXT.P14 DO.DO. 5TH PETITIONER.

EXT.P15 DO.DO. 6TH PETITIONER.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

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O.P. NO. 25767 OF 2000

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Dated this the 16th day of March, 2007

JUDGMENT

The issue raised that is forfeiture of tax paid even after granting exemption under notification is upheld by a Division Bench of this court in the decision in KOKKALA ARECANUT COMMISSION AGENT ASSOCIATION V. COMMISSIONER OF COMMERCIAL TAXES, (2003) 1 KLT S.N.80 (case no. 110). Even though counsel for the petitioner contended that payment of tax by the petitioner is only advance tax for transport of arecanut and pepper and the same cannot be treated as voluntary payment of tax, I do not think the notification makes any distinction about the nature of payment of tax. In other words, tax however, paid shall not be refunded to the parties. Since the Division Bench has unconditionally upheld the notification, there is no question of drawing any distinction in this case.

O.P. is therefore dismissed following the judgment of the Division Bench above referred.

(C.N.RAMACHANDRAN NAIR)
Judge